

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION  
AT CINCINNATI**

**JESSIE WILSON,**

*Plaintiff,*

v.

**D&N MASONRY, INC., ET AL.,**

*Defendants,*

\* Case No. 1:12-cv-922

\* Judge Timothy S. Black

\*

\* **PLAINTIFF'S MOTION FOR DEFAULT  
JUDGMENT AGAINST DEFENDANTS DON  
DEBELLO, NICK DEBELLO, AND CATHY  
DEBELLO UNDER RULE 55(b)**

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Plaintiff, by and through counsel, hereby requests the Clerk or the Court under Fed. R. Civ. P. 55(b) to enter default judgment against Defendants Don DeBello, Nick DeBello, and Cathy DeBello. A memorandum in support is attached, and a declaration of counsel is included.

Respectfully submitted,

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*Counsel for Plaintiff*

## MEMORANDUM IN SUPPORT

Plaintiff initiated this wage-and-hour matter nearly a year ago. (Doc. 3.) Several months after appearance and service of an answer by counsel on behalf of all three of the DeBellos, Plaintiff requested leave to file his first amended complaint to include a claim against a new party defendant related to a wage bond. (Doc. 30.) The Court granted leave on June 18, 2013, and Plaintiff filed his first amended complaint that same day. (Doc. 33.) To date, the three DeBello Defendants have failed to move, plead, or otherwise defend this matter. (Doc. 66.) “When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.” Fed. R. Civ. P. 55(a). Thus, the Clerk entered the DeBello Defendants in default for failure to defend themselves in this action. (Doc. 68.)

To be sure, Defendants Don DeBello, Nick DeBello, and Cathy DeBello, as employers themselves, are jointly and severally liable for any of D&N Masonry, Inc.'s wage-and-hour violations. (Doc. 33, First Am. Compl. ¶¶ 9-13, 15.) *Bleyenbergh v. D&N Masonry, Inc.*, No. 2:12-cv-777, slip op. at 5, 8 (Aug. 8, 2013) (holding Don, Nick, and Cathy DeBello jointly and severally liable for another employee's wage-and-hour claims against D&N Masonry, Inc.). Plaintiff's claims for back wages and associated penalties and damages can easily be ascertained through mathematical calculations. For ease of discussion, Plaintiff's claims can be divided into claims for hours worked, first, in Ohio and, second, in West Virginia. At this point, the appropriate governmental agency in each state has issued determinations related to Plaintiff Jessie Wilson.

In Ohio, the Department of Commerce determined Plaintiff was owed back wages in the amount of \$4,124.26 under Ohio Rev. Code § 4115.10(A). (Doc. 33, First Am. Compl. ¶¶

36, 57; Doc. 33-2, First Am. Compl. Ex. 2, March 5, 2013 Determination of Violation; Doc. 42-3, Declaration of Ryan K. Hymore at ¶¶ 5-7.) A twenty-five percent penalty must also be awarded in favor of Plaintiff under Ohio Rev. Code § 4115.10(A) in the amount of \$1,031.06. (*Id.*) Ohio Rev. Code § 4113.15(B) also permits Plaintiff an additional six percent of back wages, which equals \$247.46. In sum, Plaintiff's total Ohio law claims equal \$5,402.78.

Plaintiff's West Virginia claims are summarized in a recent West Virginia Division of Labor certification of back wages and penalties owed. (Ex. 2, October 18, 2013 Certification.)

Through the certification, the West Virginia Division of Labor determined as follows:

A. Wages Owed:

W. Va. Prevailing Wages:	\$4,116.00
Non-prevailing Wages Overtime:	<u>\$1,300.00</u>

<b>TOTAL WEST VIRGINIA WAGES OWED:</b>	<b>\$5,416.00</b>
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B. Damages Owed:

W. Va. Code §21-5A-9(b) Like Amount Penalty:	\$4,116.00
29 U.S.C. §216(b) Overtime Liquidated Damages:	\$1,300.00
W. Va. Code §21-5-4(e) Liquidated Damages:	<u>\$3,900.00</u>

<b>TOTAL WEST VIRGINIA DAMAGES OWED:</b>	<b>\$9,316.00</b>
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(Ex. 2, October 18, 2013 Certification, p. 2.) In sum, Plaintiff's total claims for hours worked in the State of West Virginia equal \$14,732.00.<sup>1</sup>

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<sup>1</sup> Because Plaintiff's 200 overtime hours were all worked in West Virginia, (doc. 42-3, Declaration of Ryan K. Hymore at ¶ 12), the Fair Labor Standards Act claim under 29 U.S.C. § 216(b) -- \$1,300 in back wages and \$1,300.00 in liquidated damages -- is included in the West Virginia section of this motion.

## CONCLUSION

Plaintiff's grand total monetary claim against Don DeBello, Nick DeBello, and Cathy DeBello exclusive of court costs and attorney's fees -- which will be determined at a later date under the local rules -- is \$20,134.78. Thus, Plaintiff requests the Clerk or the Court to enter default judgment in favor of Plaintiff and against defendants Don DeBello, Nick DeBello, and Cathy DeBello, jointly and severally, in the amount of \$20,134.78.

Respectfully submitted,

MANGANO LAW OFFICES CO., L.P.A.

s/Ryan K. Hymore

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*Counsel for Plaintiff*

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing paper will be served by operation of the Court's CM/ECF system upon all parties of record in this matter on this 19<sup>th</sup> day of November 2013. A copy will be served upon the following defaulted parties on November 20, 2013 by first class U.S. mail:

DON DEBELLO  
8463 RED LION FIVE POINTS RD.  
SPRINGBORO, OH 45066

CATHY DEBELLO  
8463 RED LION FIVE POINTS RD.  
SPRINGBORO, OH 45066

NICK DEBELLO  
8463 RED LION FIVE POINTS RD.  
SPRINGBORO, OH 45066

s/Ryan K. Hymore

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